

## COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. BOSTON MUNICIPAL COURT

Lincoln Smith, Plaintiff

VS. Civil Action  
No. T47183

City of Boston, Boston Inspectional:  
Services, Kevin J. Joyce,  
Defendants

DEPOSITION of EVANGELINA MAXWELL-DAVIS a witness  
called on behalf of the Plaintiff, pursuant to the  
provisions of the Massachusetts Rules of Civil Procedure,  
before Nancy Atherton, a Certified Shorthand Reporter and  
Notary Public in and for the Commonwealth of  
Massachusetts, at the Law Office of Stopa & Associates,  
36 Mechanic Street, Suite 208, Foxboro, Massachusetts, on  
Thursday, February 19, 2004, commencing at 10:00 a.m.

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## APPEARANCES:

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Attorney for the Plaintiff

CITY OF BOSTON LAW DEPARTMENT  
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Attorney for the Defendants

ALSO PRESENT: Lincoln Smith, Plaintiff

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Evangeline Maxwell-Davis				
By Mr. Ohlson:	4		44	
By Mr. Chernetsky:		37		45
<u>FURTHER REDIRECT</u>				
	46			
<u>FURTHER RECROSS</u>				
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P R O C E E D I N G S

MR. OHLSON: Do you want to do the usual  
stipulations?

MR. CHERNETSKY: Sure. Why don't we say what they  
are though just for the record.

MR. OHLSON: Sure. All objections, except as to  
form, and -- I'm sorry -- all objections and motions to  
strike, except for form, reserved until time of trial.  
And do you want her to read and sign, 30 days?

MR. CHERNETSKY: Sure. We'll waive the notary.  
What he means is you'll get a chance to review the  
deposition transcript and correct any errors if you have  
them.

THE WITNESS: Okay.

EVANGELINA MAXWELL-DAVIS,

A witness called for examination, having been duly  
sworn, testified as follows:

## DIRECT EXAMINATION

BY MR. OHLSON:

Q My name is George Ohlson and I'm an attorney with Stopa &  
Associates, and I represent the plaintiff Lincoln Smith  
in this action. So have you ever been deposed before?

A Yes.

Q Okay. When were you deposed?

A I don't recall what year or what time, but I have been.

Q Well, I'm just going to go through some simple just instructions that, you know, you've probably heard before. A deposition is a fancy way of saying that I ask you questions and you answer them. And at times throughout this deposition I'll probably ask questions that may not make sense, so you may need to ask me to rephrase them.

The thing is that only one of us can talk because of the stenographer at one time. And I ask that if you don't understand a question, that you ask me to repeat it, and I'll rephrase it so you understand it. And then I ask that you wait until I'm done with my question before you answer because you could anticipate the wrong end of the question.

And if you want to take a break at any time, feel free to do that. Just if there's a question pending, I need you to answer the question before we take the break. So if there's nothing else, I'll get started.

And could you state your full name?

A Evangelina Maxwell-Davis.

Q And what is your marital status?

A Right now?

Q Yes.

A I'm currently in the middle of a divorce.

Q And what is your date of birth?

A 11/13/65.

Q And what is your highest level of education?

A College.

Q Where did you go to college?

A Quincy, Quincy College.

Q Was that an undergraduate degree?

A Paralegal studies, yes.

Q Was that a junior college at the time or was it a four-year college?

A At the time it was a junior college.

Q So you have a two-year --

A I have a two-year --

Q -- associates?

A -- associates degree in paralegal studies.

Q Okay. And what year was that?

A In the '80s. I can't --

Q Okay. And when you finished with your paralegal degree, where did you work?

A Attorney Earl Miller's office in Boston.

Q And how long did you work there?

A Six years.

Q And when you finished with the attorney's office, where did you go next?

A I don't know. Maybe Rogerson Communities after that.

Q Okay. And do you know where you worked after that?

A Yeah. I worked for the city.

Q And what did you do for the city?

A I was an office manager for Jamaica Plain Community Centers.

Q What year was that?

A Probably '96.

Q And how long did you do that?

A Maybe two years.

Q And where did you go after that?

A Where I currently work now, inspectional services.

Q And that's the City of Boston Inspectional Services?

A Yes, correct.

Q So you started there in 1998?

A Yes.

Q Approximately?

A Yeah.

Q And what was your position when you started?

A My position at inspectional services?

Q Yes, when you started.

A I was an inspector.

Q Did you have any background in housing inspection before the position?

A Yes.

Q What was your background?

A When I worked with the attorney we did housing and

evictions and all different types of housing.

Q So what specifically were you exposed to as a paralegal?

A All types of everything as far as housing is concerned.

Q But what type of responsibilities did you -- what were your duties that had to do with -- let me rephrase the question. What specifically did you do? Did you type letters? Did you do research?

A I did everything. I typed letters. I did research. I sat in on hearings. I did everything.

Q Did you go to school at all for -- to be an inspector?

A Yes, when I got to inspectional services I was trained.

Q Tell me about that training. What was it, an in-house training at inspectional services?

A Yes, it was in-house, and I went out with a senior inspector for about, I don't know, maybe six months.

Q If I could back up a second. What -- so you are saying that you went out with a senior inspector and followed him throughout his day, is that what you're saying?

A I wouldn't say I followed him throughout his day. I would say he trained me on certain aspects of the job, yes.

Q Okay. Was there any sort of formal classroom part to this training?

A In-house classroom training, yes.

Q How long did that last?

1 A Maybe six months.  
 2 Q Okay. And did you do this at the same time when you  
 3 worked alongside this senior inspector?  
 4 A Correct, yes.  
 5 Q And what sort of things did -- generally speaking, what  
 6 sort of things did you learn at this training?  
 7 A The state sanitary code.  
 8 Q And when you say the state sanitary code, what is your  
 9 interaction as an inspector with the state sanitary code?  
 10 A We enforce the state sanitary code.  
 11 Q So when you -- and is this -- when you say that you  
 12 enforce the state sanitary code, is this for the City of  
 13 Boston?  
 14 A Yes.  
 15 Q And solely the City of Boston?  
 16 A Yes.  
 17 Q So are you still an inspector?  
 18 A Yes.  
 19 Q Did your position at any time change at Boston  
 20 Inspectional Services?  
 21 A Yes.  
 22 Q What did it change to?  
 23 A I acted in different -- assistant director position.  
 24 Q Assistant director of?  
 25 A Housing, the same department that I still work for.

1 Q And how long did you do that?  
 2 A Maybe a year.  
 3 Q Is that the only different position that you've had at  
 4 ISD other than housing inspector?  
 5 A Yes.  
 6 Q When you had the training at ISD, did, you know, the  
 7 formal classroom, did they bring in outside people to  
 8 train you or was it inside people that trained you?  
 9 A I mean I've sat at a lot of trainings within my  
 10 department where some outside people came in and it was  
 11 some in-house people.  
 12 Q How many trainings have you gone through in the time  
 13 you've been there?  
 14 A I can't -- maybe 20, maybe 25.  
 15 MR. CHERNETSKY: You don't have to guess if you  
 16 don't know.  
 17 THE WITNESS: Okay.  
 18 Q As an inspector, what are your day-to-day duties?  
 19 A To go out and inspect properties.  
 20 Q And how do you know which properties to go to?  
 21 A It's complaint driven.  
 22 Q So if a tenant makes a complaint with the city, then you  
 23 would go out and inspect that property, is that right?  
 24 A Yes.  
 25 Q And how many inspections do you do per day?

11

1 A It varies.  
 2 Q On average.  
 3 A Thirteen.  
 4 Q And is there a particular area which you inspect within  
 5 the city?  
 6 A Yes.  
 7 Q What is that area?  
 8 A Currently?  
 9 Q Currently or throughout the time that you've been at ISD  
 10 I guess.  
 11 A I've inspected the entire City of Boston.  
 12 Q Okay. Where were you inspecting in December of 2000?  
 13 A Ward 13.  
 14 Q And what is Ward 13?  
 15 A Dorchester.  
 16 Q Do you know Lincoln Smith?  
 17 A Yes, I know Lincoln Smith as Lincoln Smith.  
 18 Q How do you know him?  
 19 A I know that he's the owner of a property that I  
 20 inspected.  
 21 Q And when did you meet Lincoln first?  
 22 A I don't recall.  
 23 Q Was it before December of 2000?  
 24 A I really don't recall.  
 25 Q What is your personal opinion of Lincoln Smith?

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1 A I don't have a personal opinion of Lincoln Smith.  
 2 MR. CHERNETSKY: Objection.  
 3 Q Could you give me an overview of the inspection process  
 4 if there's a complaint? What happens next? What do you  
 5 do next?  
 6 A Can you rephrase that? Do you want my opinion of what it  
 7 is because that's not my job.  
 8 Q Not your opinion. I just want to know the different  
 9 steps. If you go to a property from a complaint and then  
 10 you go and you find a violation, how does the process go  
 11 from there? What happens after that?  
 12 A If I go to a property --  
 13 MR. CHERNETSKY: George, are you asking about the  
 14 process today or the process in December of 2000?  
 15 MR. OHLSON: In December of 2000.  
 16 A In December of 2000, if I go to a property and I find a  
 17 violation in a unit that I have inspected, then I go back  
 18 to the office depending on if it's an emergency status  
 19 property or if it's just something that can be written  
 20 when I get back to the office. I go back to the office.  
 21 I write a legal notice. The property owner is served by  
 22 one of our constables if it's within the City of Boston,  
 23 and he has however many days to correct the violations.  
 24 If it's a 24-hour notice, he has 24 hours. If it's a  
 25 seven-day notice, he has seven days from the day he was

served.

Q Okay. What determines whether or not there's 24 hours notice or seven days or --

A The state sanitary code determines that.

Q Okay. Are you familiar with the different violations and which ones require more notice or which ones require less notice?

A Yes.

Q Who in ISD matches up the violations with the sanitary code to determine how much notice is given?

A The inspectors.

Q So that would be something that you would do?

A It's a judgment call when you are out in the field. When you are out of in field and you see that a ceiling is caved in and there's water pouring down, then yes, I'd say this needs to be fixed immediately.

Q So would a no-heat complaint be an emergency situation?

A Yes.

Q Okay. So after a landlord has notice of a violation, he's given how much -- 24 hours to fix it for example?

MR. CHERNETSKY: Objection.

Q I'll rephrase the question. Suppose that the time period which is allotted expires, seven days or 24 hours, whatever, what happens next? Does ISD reinspect the property at that point?

MR. CHERNETSKY: Objection, but you can answer.

THE WITNESS: Answer?

MR. CHERNETSKY: Yup.

A Yes. When the time period is up, the inspector goes back and reinspects the property to see if the violation has been corrected.

Q Is the landlord given notice that ISD is coming to reinspect?

A In December --

Q 2000.

A -- 2000, no the landlord was not given notice.

Q Is that different now?

A Now the landlord is given a copy of the reinspection notice. It is mailed out to the landlord. So he knows whether or not his property was approved, whether he fixed the violation properly or whether he did not.

Q But I guess my question is this, does the landlord know that you are going to be on the property to reinspect before you get there to reinspect? Do you see what I'm saying?

A Do you want me to answer now?

Q Please.

A No.

Q So in December of 2000, would the landlord get notice after the fact, after you've done your reinspection that

15

it took place?

A No.

Q And why was that?

MR. CHERNETSKY: Objection. Answer if you can.

A I don't know.

Q Okay. So have you been to 11 Newport Street?

A Yes.

Q And how many times do you think you've been there?

A I can't answer that.

Q Were you there before December of 2000?

A I don't know.

Q Do you know if you were there on December 23, 2000?

A I really don't know unless I have paperwork in front of me. I don't remember.

Q Okay. If I told you that was the first day of the no-heat complaint that this litigation is about with Evangelina Davis (sic), were you there on that day?

MR. CHERNETSKY: Objection. It's Miss O'Shea who I believe made the no-heat complaint.

Q Miss O'Shea; I'm sorry. You're Miss Davis. The first day that Miss O'Shea complained about the heat was December 23. Were you one of the inspectors that was present on the property on that day?

A I don't -- I really don't know.

Q Okay. Bear with me for a second. When we talked about

16

inspections that you do, there's two kinds of inspections, correct, there's an inspection for a code violation; there's also a preinspection for rental property?

MR. CHERNETSKY: Objection. You can answer.

A There's a reinspection.

Q Okay.

A I mean there's reinspections. There's prerental inspections which are done before tenants move into a property.

Q Okay.

A And then there's inspections complaint driven.

Q Okay. So my statement that there's two kinds is inaccurate. There's reinspections, and those stem from double-checking as to whether or not a violation has been corrected, is that right?

A Yes.

Q And then there's the inspection that stems from a complaint. But then there's a whole different category of preinspections for rental properties, is that correct?

A Yes.

Q Okay. Did you do a preinspection of 11 Newport Street?

A What apartment 11 Newport Street?

Q Apartment 3.

A Yes.

1 Q Do you remember when you did that?

2 A No.

3 Q Okay. When you do an inspection, would you check things

4 like the heat?

5 A When I do what type of inspection?

6 Q A preinspection, would you check to see if the heat was

7 in working order?

8 A It depends. Sometimes when the system -- when you go to

9 do a preinspection the gas isn't on. The system is not

10 on and you can't check it. If you can check it, yes.

11 Q If an inspection was done in February, would you be able

12 to check to see if the heat was working?

13 MR. CHERNETSKY: Objection.

14 A What type of inspection?

15 Q I'm sorry, preinspection.

16 A Can you ask your question again?

17 Q Sure. If an inspection was done in February, would it be

18 easier to check to see if the heat was in working order?

19 MR. CHERNETSKY: Objection.

20 A I can't answer that. There's so many different

21 components.

22 Q Fair enough. This is the inspection done on February 6

23 of 2000 for Unit 3.

24 MR. OHLSON: We'll mark this as Exhibit 1.

25 (2/6/01 inspection report marked as Exhibit No. 1.)

1 MR. CHERNETSKY: This could get a little confusing.

2 Let's note on the record there's an exhibit tag on this

3 document that says Exhibit 1, Davis, 10/16/01 from

4 another context.

5 MR. OHLSON: Right.

6 Q Do you remember this document?

7 A I don't see that document.

8 Q Okay. This document, what this indicates is about when

9 the inspection of Unit 3 was done of 11 Newport Street?

10 A Are you asking me a question?

11 Q Yes.

12 A You want to know if this is an approval certificate from

13 the preinspection of Unit No. 3?

14 Q What the approval certificate --

15 A You are asking me what this is, and I don't see these.

16 All I do is the inspection, turn in my paperwork and

17 someone else picks it up from there. So I never see

18 these. So I can assume from reading it, it says

19 inspection certificate, that that's what it is.

20 Q And so you do the preinspection, you turn in your

21 paperwork, and then some else issues this?

22 A Correct.

23 Q What paperwork do you turn in?

24 A I turn in my work sheet that says whether the unit was

25 approved or not approved or whether it had to fix some

1 things before it got approved or just my work sheet.

2 Q Okay. And so this inspection, if you look on here, was

3 issued on -- the certificate was issued on February 6,

4 2000. Does that mean that you inspected the property on

5 February 6, 2000?

6 A I don't know.

7 MR. CHERNETSKY: I think she said she doesn't know

8 anything about this document or how it's created.

9 MR. OHLSON: I understand.

10 Q So with your work sheet you check off the different --

11 you look on this work sheet; it has the different areas

12 that you would inspect when you go into a property, is

13 that correct?

14 A No.

15 Q Then what is the work sheet again?

16 A A work sheet is an open space for me to write things on,

17 for me to write my notes of what I see, what needs to be

18 done or what you need corrected.

19 Q Okay. Getting back to some of the things you would look

20 at when you do an inspection, would you look for water

21 stains in an apartment?

22 A Is that a preinspection?

23 Q Yes, preinspection.

24 A Yes.

25 Q Would you in a preinspection, would you look for rodents?

1 A Yes.

2 Q Rats?

3 A Yes.

4 Q Mice?

5 A Evidence of mice.

6 Q Okay. How about insects?

7 A Evidence of.

8 Q In addition, would you look to see if there was garbage

9 piled up or would that be something that you would put in

10 your work sheet if there was an excessive amount of

11 garbage?

12 A Excessive amount of garbage where?

13 Q For example, if there was beer bottles and cans and trash

14 that were debris, if they were blocking an entrance or if

15 they were just laying out on a porch or something like

16 that.

17 MR. CHERNETSKY: Objection.

18 A When the preinspection was done for this unit it was

19 empty. No one was living there. There was no cans,

20 bottles or anything anywhere. The apartment was empty.

21 Q Okay. When you do a preinspection, do you just look at

22 the apartment itself in a triple-decker apartment complex

23 or do you look at the common areas and the other aspects

24 of the property?

25 A You look in the unit itself and the common areas.

1 Q Okay. Would you look at the doors to see if they had any  
 2 problems opening, closing?  
 3 A Yes.  
 4 Q Would you look to see if there was soot on the walls?  
 5 A I look at the walls in general. I'm not looking for  
 6 anything in particular. I look for the walls to make  
 7 sure they are in good repair.  
 8 Q I see. Would you notice to see -- if you saw a broken  
 9 bathroom -- strike that. Do you remember what the  
 10 condition of Apartment 3 was when you did the  
 11 reinspection?  
 12 MR. CHERNETSKY: Objection.  
 13 Q Preinspection, excuse me.  
 14 A No.  
 15 Q Do you remember saying that it seemed like it was just  
 16 painted?  
 17 A I don't remember.  
 18 Q If you issued a preinspection -- strike that. If the  
 19 department issued a preinspection certificate, would that  
 20 mean that the apartment met the sanitary code?  
 21 MR. CHERNETSKY: Objection.  
 22 A At that time.  
 23 Q Okay. When you say at that time, does the sanitary code  
 24 frequently change?  
 25 A When I say at that time, I mean at the time of the

1 inspection. At the time I performed the inspection, the  
 2 apartment met the requirements of the state sanitary  
 3 code.  
 4 Q Okay. Do you remember whether you in the case of the --  
 5 strike that. Do you remember finding violations on  
 6 Mr. Smith's property?  
 7 MR. CHERNETSKY: What time are you talking about?  
 8 Q In or around December of 2000.  
 9 A What property?  
 10 Q 11 Newport Street.  
 11 A I don't.  
 12 Q Okay. If an inspection is done and it finds violations  
 13 and then there's a reinspection and those violations have  
 14 been corrected, what action is taken by yourself as an  
 15 inspector? What do you do next?  
 16 MR. CHERNETSKY: Objection.  
 17 Q Does that make sense?  
 18 A We close the case. If the violations have been  
 19 corrected, then the case is closed.  
 20 Q And how do you do that? Is there paperwork that reflects  
 21 that?  
 22 A Yes.  
 23 Q Do you remember whether or not Mr. Smith wrote you at any  
 24 point?  
 25 A Mr. Smith wrote me at many points.

23

1 Q Okay. Did Mr. Smith -- did you get the feeling that  
 2 Mr. Smith was unhappy about the pace -- excuse me --  
 3 strike that. Did you get the feeling that Mr. Smith was  
 4 unhappy about the amount of time it took ISD to close out  
 5 violations?  
 6 A I don't really have an opinion on that. Whether he was  
 7 happy or not the way we closed out the violations, is  
 8 that your question?  
 9 Q No, it's not. Was Mr. Smith complaining to you about how  
 10 quickly or how slow violations were closed out?  
 11 A I don't recall that.  
 12 Q Okay. Do you remember issuing a violation for Apartment  
 13 1 because there was no heat in the apartment?  
 14 A No.  
 15 Q Do you remember stating to Mr. Smith that you could not  
 16 close out the no-heat complaint because a company by the  
 17 name of EnviroTech placed breathable filters over the  
 18 registers?  
 19 A No.  
 20 Q After they cleaned out the duct work?  
 21 A No, I never said that.  
 22 Q Okay. If Mr. Smith had replaced the furnace so the  
 23 furnace was in good working order, then the complaint for  
 24 no heat at that point would be closed?  
 25 A If the apartment met the requirements of the temperature

24

1 requirements and if the heating system was actually  
 2 working.  
 3 Q Okay. I want to take a few minutes and go through these  
 4 violations with you, if we could. These are the  
 5 originals of the violations dated 12/28/2000.  
 6 MR. OHLSON: You have copies of these, right?  
 7 MR. CHERNETSKY: Yes.  
 8 MR. OHLSON: Okay. Do you think it's better that we  
 9 mark them each separately?  
 10 MR. CHERNETSKY: I guess it depends on if you want  
 11 to discuss them separately or if you want to discuss them  
 12 as a group. Maybe mark them as a group if you want to.  
 13 You can make the decision how to mark them as you see how  
 14 they come in.  
 15 MR. OHLSON: Good enough.  
 16 BY MR. OHLSON:  
 17 Q Do you know if these are violations that you found by  
 18 inspecting the property?  
 19 A It's a building inspector violations.  
 20 Q So this is not from ISD?  
 21 A It is. It's from a building inspector not a housing  
 22 inspector.  
 23 Q What is the difference?  
 24 A A building inspector does the building, the outside  
 25 perimeters to see if permits were secure. Housing does



1 inside.  
 2 Q Okay.  
 3 MR. OHLSON: Then I don't need to do that as an  
 4 exhibit.  
 5 Q I want to show you some documents here and these I will  
 6 mark as an exhibit.  
 7 MR. OHLSON: You've seen these three, right?  
 8 MR. CHERNETSKY: Yes.  
 9 MR. OHLSON: All set?  
 10 MR. CHERNETSKY: Sure.  
 11 BY MR. OHLSON:  
 12 Q These are three reinspections results. Now, are these  
 13 reinspections that you did?  
 14 A Yes.  
 15 MR. OHLSON: And what I'd like to do is mark each  
 16 one of them as an exhibit.  
 17 (Reinspection results marked as Exhibits 2-4.).  
 18 Q The dates on these, what are the dates on these three  
 19 documents that you did the reinspections?  
 20 A You want to know what the date is?  
 21 Q Please.  
 22 A December 26, 2000.  
 23 Q For you to do a reinspection, would you have to go to the  
 24 property?  
 25 A Yes.

1 Q And what is the apartment number?  
 2 A The apartment number that's on the document?  
 3 Q Please.  
 4 A Apartment 3.  
 5 Q And that's on all three documents?  
 6 A Yes.  
 7 Q And what is the case number here on 2, Exhibit 2?  
 8 A 008726, 008806.  
 9 Q And then --  
 10 A No case number.  
 11 MR. CHERNETSKY: Maybe we should say the second was  
 12 Exhibit 3 and then Exhibit 4.  
 13 MR. OHLSON: Right.  
 14 Q Why would -- oh, if I could back up a second. On Exhibit  
 15 2, what does it say as far as an explanation of what was  
 16 found?  
 17 A It says violations not corrected.  
 18 Q And there's -- does it say anything else?  
 19 A As opposed to what was found, no. It says violations not  
 20 corrected.  
 21 Q Okay. There's a -- in parenthesis there's a sentence  
 22 that says, Mark one of the following. And what is below  
 23 that?  
 24 A Prosecution recommended.  
 25 Q Is that checked off?

27

1 A Yes.  
 2 Q And what is to the right of that?  
 3 A Twenty-four hours, no heat.  
 4 Q So that would mean that Apartment 3 on that date had no  
 5 heat. And what does 24 hours mean?  
 6 A Maybe that there was a 24-hour notice written previous to  
 7 that.  
 8 Q Are you guessing or are you sure that it's -- that's what  
 9 it is; there was a 24-hour notice before that or could  
 10 you mean that the apartment went 24 hours without heat?  
 11 MR. CHERNETSKY: Objection.  
 12 A No.  
 13 Q Okay. And then on Exhibit No. 3 below the mark one of  
 14 the following, what is checked off?  
 15 A Prosecution recommended.  
 16 Q And what does it say to the right?  
 17 A Twenty-four hour notice, no heat.  
 18 Q Okay. And then on Exhibit 4 in parentheses under mark  
 19 one of the following, what does it say? Is there  
 20 anything checked off?  
 21 A Prosecution recommended.  
 22 Q And is there anything written to the right?  
 23 A No.  
 24 Q Okay. Why would you have three documents like this for a  
 25 reinspection that -- well, these two are obviously

28

1 different, would you agree, because 24 hour, no heat is  
 2 written in different spots?  
 3 MR. CHERNETSKY: Objection.  
 4 Q Excuse me. Strike that then. Why would you have these  
 5 three documents for the one reinspection?  
 6 A First of all, it's two different cases, so two different  
 7 -- each case you need a separate form for.  
 8 Q Okay.  
 9 A So because it's two different numbers on each exhibit  
 10 means -- indicates that it's two separate cases. And the  
 11 only other thing that I can say is that maybe one was for  
 12 Apartment 1 and one was Apartment 3 and I made an error  
 13 in writing apartment numbers on them.  
 14 Q Okay. But --  
 15 A But they are two separate cases.  
 16 Q But look at the time on both of them.  
 17 A Uh-huh.  
 18 Q On Exhibit No. 2 and Exhibit No. 3, is the time the same?  
 19 A The time is the same.  
 20 Q So could these be for different apartments if the time  
 21 was the same?  
 22 A The time exhibits the time I stepped foot onto the  
 23 property.  
 24 Q Okay. And with the third one, Exhibit No. 4, why is  
 25 there no explanation written in the right-hand corner in

1 contrast to the other two they say 24 hour, no heat? Why  
 2 is there no written comments?  
 3 A I don't normally write written comments. I may have been  
 4 trying to differentiate something one from the other and  
 5 that's why I did that. My norm is not to do that.  
 6 Q And why would there be no case number?  
 7 A Sometimes there's not a case number put on the complaint  
 8 form before we go out into the office.  
 9 Q What do you do with these results, reinspection results  
 10 when you are done with the reinspection?  
 11 A I hand in my paperwork to my supervisor.  
 12 Q Okay. And if you know, if you could read down the  
 13 bottom, what is this down the bottom of Exhibit No. 2?  
 14 A You want me to read that?  
 15 Q Please.  
 16 A Signed this 4th day of February 2001 under the pains and  
 17 penalties of perjury the inspector inspected the above  
 18 described premises, E. Maxwell Davis, housing inspector,  
 19 the City of Boston.  
 20 Q Why would you be on this document?  
 21 A Someone came in and requested it or a certified copy of  
 22 the reinspection results and that's how we certify the  
 23 copy.  
 24 Q Okay. So this is in response to a request that someone  
 25 else had after the after the inspection?

1 A Correct.  
 2 Q Okay. Throughout the time you've been at ISD, who has  
 3 been your supervisor? When you first started, who was  
 4 your supervisor?  
 5 A Michael Ford.  
 6 Q Michael what?  
 7 A Michael Ford.  
 8 Q And how long was he your supervisor?  
 9 A I don't want to guess.  
 10 Q Are you saying you don't know?  
 11 A No, I don't know.  
 12 Q Okay. What was his title at that time?  
 13 A Assistant director.  
 14 Q And did there ever come a time when your supervisor  
 15 changed?  
 16 A Yes.  
 17 Q When was that?  
 18 A When Michael Ford retired.  
 19 Q And then who was the supervisor at that point?  
 20 A Dion Irish.  
 21 Q Who was your supervisor in December of 2000?  
 22 A I don't recall. Probably Michael Ford.  
 23 Q Okay. Do you know who Clifford Davis is?  
 24 A Yes.  
 25 Q Who is Clifford Davis?

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1 A A landlord.  
 2 Q Do you know what happened to -- do you know if Clifford  
 3 Davis -- strike that. Do you know if Mr. Davis is still  
 4 a landlord?  
 5 A No, I don't know.  
 6 Q Did you ever inspect Mr. Davis' property?  
 7 A Yes.  
 8 Q Did you -- when you inspected his property, do you know  
 9 if you found violations?  
 10 A Yes.  
 11 Q Do you know if Mr. Joyce ever said to Mr. Smith that I'm  
 12 going to treat you like I treated Clifford Davis?  
 13 A I don't know that.  
 14 Q Do you know if on December 27 that Mr. Joyce ordered his  
 15 inspectors to find every violation he could at 11 Newport  
 16 Street?  
 17 MR. CHERNETSKY: Objection.  
 18 A I don't know that either.  
 19 Q Okay. Have you ever falsified records?  
 20 A No.  
 21 Q At Boston Inspectional Services?  
 22 A No.  
 23 Q Do you know if Commissioner Joyce, how many times he has  
 24 gone onto property when you've been there?  
 25 A I don't know.

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1 Q When you go out on inspections, does he ever go?  
 2 A Me in particular?  
 3 Q Right.  
 4 A I've been out on inspections with Commissioner Joyce,  
 5 yes.  
 6 Q How many times would you say?  
 7 A I don't know.  
 8 Q And why -- do you know why Commissioner Joyce went on  
 9 those particular inspections with you?  
 10 A No.  
 11 Q When Mr. Joyce went with you, did he bring John Dorsey?  
 12 A Not that I recall.  
 13 Q Did you ever say to Mr. Smith that any and all contact  
 14 had to go through Commissioner Joyce with his violations?  
 15 A No.  
 16 Q Was that the way it was though, did all contact have to  
 17 go through Mr. Joyce to clear up Mr. Smith's violations?  
 18 A No.  
 19 MR. OHLSON: Off the record a minute.  
 20 (Short break taken.)  
 21 Q Do you know who Tony Jones is?  
 22 A Yes.  
 23 Q Does he work at ISD?  
 24 A Not anymore.  
 25 Q What was his position when he worked there?



1 A Housing inspector.  
 2 Q Do you know a Steven O'Donnell?  
 3 A Yes.  
 4 Q Did he work for ISD?  
 5 A Yes.  
 6 Q Does he still work for them?  
 7 A Yes.  
 8 Q Was he ever your supervisor, Mr. O'Donnell?  
 9 A No, not my immediate supervisor, no. But the managers  
 10 that are on the floor, they can tell you -- they can give  
 11 you an order to do something as opposed to your immediate  
 12 supervisor, also.  
 13 Q And what was Mr. O'Donnell's title?  
 14 A Assistant director.  
 15 Q Of?  
 16 A Of inspection of the housing department.  
 17 Q And so he could give you instructions?  
 18 A Yes.  
 19 Q Were you ever an acting supervisor?  
 20 A Yes.  
 21 Q And is that the director of housing position that you  
 22 told me about?  
 23 A The assistant director, yes.  
 24 Q Is that the same?  
 25 A Same thing.

1 Q And why did you only retain that position for I think you  
 2 said one year, is that right?  
 3 A It was acting position.  
 4 Q Acting. Why did you not continue to be in that role?  
 5 A I prefer to be in the field.  
 6 MR. CHERNETSKY: Objection.  
 7 Q So it was your decision?  
 8 A Uh-huh. I mean they posted the job and I didn't apply  
 9 for it.  
 10 Q Okay. Were you ever demoted at ISD?  
 11 A No.  
 12 Q Is it common on a no-heat call to inform the commissioner  
 13 of it? I'll rephrase the question. How many no-heat  
 14 calls do you respond to in the wintertime?  
 15 MR. CHERNETSKY: Which wintertime?  
 16 Q Strike that. In December of 2000.  
 17 A I don't know --  
 18 Q Okay.  
 19 A -- how many no-heat calls.  
 20 Q Would it be -- could you estimate?  
 21 A I mean 30, 40, 50.  
 22 Q Is it common for apartments to lose heating during the  
 23 wintertime when it's cold?  
 24 A If the system breaks down and it's not being maintained,  
 25 yes, it's going to break down in the winter.

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1 Q Does the commissioner get involved with every no-heat  
 2 call that you know of?  
 3 A I don't know what the commissioner does.  
 4 Q Have you ever called the commissioner to inform him that  
 5 you responded to a no-heat call or that there was a  
 6 no-heat call?  
 7 A No.  
 8 Q Do you have any special licenses?  
 9 A I have a led license to inspect to see if led is present  
 10 in an apartment. I have a constable license.  
 11 Q Do you have any licenses in plumbing?  
 12 A No.  
 13 Q Or heating ventilation and air-conditioning?  
 14 A No.  
 15 Q Do you have any certification from the department of  
 16 public safety?  
 17 A No.  
 18 Q Do you remember a leak in the bathroom in Mr. Smith's  
 19 apartment building on 11 Newport Street in December of  
 20 2000?  
 21 A In what apartment?  
 22 Q In Apartment 1, do you remember finding a violation?  
 23 A I do not.  
 24 Q Do you remember -- so then you wouldn't remember whether  
 25 that was repaired, is you correct?

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1 A This is correct.  
 2 Q And then you wouldn't remember whether or not -- strike  
 3 that. Do you remember a leak in the roof at Apartment 3  
 4 on 11 Newport Street?  
 5 A I remember a leak in the ceiling.  
 6 Q Okay.  
 7 A In Apartment 3 on Newport Street.  
 8 Q Do you know whether or not the roof was repaired?  
 9 A Yes.  
 10 Q Do you know when that was?  
 11 A I do not.  
 12 Q How long does it typically take before -- strike that.  
 13 Do you remember finding approximately 200 beer bottles  
 14 and household garbage in I would say in the vicinity of  
 15 Apartment 3 on the porch, back porch?  
 16 A I remember the back porch of Apartment 3, and there was  
 17 not 200 beer bottles. I can't give you a number. But I  
 18 have a vague picture in my mind of what the porch, the  
 19 rear porch of that unit looked like, and it did have some  
 20 beer bottles on it. And I can't give you a number. But  
 21 I know from looking at it, it was nowhere near 200  
 22 bottles.  
 23 Q Do you know who was responsible for putting that garbage  
 24 and those beer bottles there?  
 25 A No.

1 Q Do you know if it was Miss Williams, the tenant in a  
2 Apartment 3?  
3 MR. CHERNETSKY: Objection.  
4 A No.  
5 Q Do you remember speaking to Miss Williams about it?  
6 A Yes.  
7 Q And what did you tell Miss Williams?  
8 A I told Miss Williams that she needed to clean off the  
9 rear porch.  
10 Q And did she do that?  
11 A Yes.  
12 Q Did you ever receive a certified letter from Mr. Smith  
13 regarding 11 Newport Street?  
14 A No, not that I recall.  
15 MR. OHLSON: Give us a minute.  
16 (Discussion off the record.)  
17 MR. OHLSON: No further questions. Do you have  
18 anything?  
19 MR. CHERNETSKY: I do.  
20 CROSS-EXAMINATION  
21 BY MR. CHERNETSKY:  
22 MR. CHERNETSKY: George, if I may see, please,  
23 Exhibits 2, 3 and 4.  
24 MR. OHLSON: Oh, sure.  
25 Q Inspector, I'm going to put in front of you again what we

1 marked earlier as Exhibits 2, 3 and 4. Are those  
2 reinspection reports?  
3 A Yes.  
4 Q And is the reinspection conducted when a notice of  
5 violation has not been cleared within the time prescribed  
6 therein?  
7 A Yes.  
8 Q And I'm going to look first at what's been marked as  
9 Exhibit No. 4. Actually, strike that. Again, Exhibit  
10 No. 2, what is the case number on the reinspection result  
11 of Exhibit 2?  
12 A 008726.  
13 Q Okay. And I'm going to show Mr. Ohlson first a document  
14 and then I'll show it to you. Do you recognize this  
15 document type?  
16 A Yes.  
17 Q And what is this form called?  
18 A It's a 24-hour notice, legal notice.  
19 Q And does this also have a case number written on it?  
20 A Yes, it does.  
21 Q And does that match the numbers that are written on  
22 Exhibit 2 which we marked earlier today?  
23 A Yes.  
24 Q Okay. And were you the inspector who conducted the  
25 original inspection which led to this legal notice?

1 A No.  
2 Q Okay. And what date was this inspection conducted on?  
3 A December 23, 2000.  
4 Q And could you just review the notice briefly and tell me  
5 when you are done, please?  
6 A Okay.  
7 Q Does it appear to you that this notice of violation  
8 includes a 24-hour no-heat complaint?  
9 A Yes.  
10 Q And what is the apartment number at which that complaint  
11 was registered?  
12 A Apartment No. 1.  
13 Q At 11 Newport Street we should say?  
14 A Yes, at 11 Newport Street.  
15 Q And what apartment is listed on the reinspection result  
16 which is Exhibit No. 2?  
17 A Apartment No. 3.  
18 Q So that's incorrect, would that be fair to say?  
19 A Yes, the apartment number is incorrect.  
20 Q Aside from the discrepancy between apartment numbers,  
21 does this reinspection result appear to coincide with  
22 this notice of violation?  
23 A Yes.  
24 Q I'm sorry. Strike that. Let me just rephrase that  
25 better. Does the reinspection result report which is

1 Exhibit No. 2 appear to coincide with this notice of  
2 violation dated 12/23 of 2000?  
3 A Yes.  
4 Q Okay.  
5 MR. CHERNETSKY: Let's mark that please as Exhibit  
6 5.  
7 (12/23/00 notice of violation marked as Exhibit  
8 No. 5.)  
9 Q Turning now to Exhibit No. 3 which we marked earlier, I'd  
10 like to also direct your attention to a document which  
11 for the record was previously marked as deposition  
12 Exhibit No. 3 in plaintiff Lincoln Smith's deposition and  
13 already bears that marking.  
14 MR. CHERNETSKY: Why don't we go ahead and mark that  
15 now as Exhibit No. 6 I believe.  
16 (Notice of violation - 008806 marked as Exhibit  
17 No. 6.)  
18 Q What is the case number and H number on what we've marked  
19 earlier as Exhibit No. 3?  
20 A H-14, case number 008806.  
21 Q What is the H number and case number on what we've just  
22 marked as Exhibit No. 6?  
23 A H-14, 008806.  
24 Q Okay. And is this notice of violation Exhibit 6 an  
25 inspection which you conducted?

1 A Yes.

2 Q And what apartment is noted on Exhibit No. 6?

3 A Three.

4 Q And what apartment is noted on Exhibit No. 3?

5 A Three.

6 Q And what is the -- if you could review Exhibit No. 6 for

7 us. What is the type of violation which you've cited

8 there?

9 A The middle bedroom ceiling has a water leak.

10 Q Okay. And what was the time frame for that violation to

11 be rectified?

12 A Twenty-four hours.

13 Q And what on Exhibit 3 has been marked as the complaint

14 type or what notation had been made as what the type of

15 complaint is?

16 A 24-hour notice.

17 Q Right. Anything else?

18 A Prosecution recommended, 24-hour notice, no heat.

19 Q Okay. Exhibit 6 however is not related to a heat

20 complaint, is that correct?

21 A That's correct.

22 Q Okay.

23 A Can I say something?

24 Q Go ahead.

25 A I just want to clear up that maybe this could have been a

1 clerical error or one of my errors, an error in the

2 office. I didn't write the H numbers on here. I was

3 asked to certify this. They may have written H numbers

4 on this, and it may have been, you know, before I may

5 have written it and not known they were going to put the

6 H number on it. I may have assumed it was going to go

7 with that. And I had made a mistake of writing Apartment

8 3.

9 Q Besides the reference to no heat on Exhibit No. 3, does

10 Exhibit No. 3 and Exhibit No. 6 appear to coincide?

11 A Yes.

12 MR. CHERNETSKY: And I'd like to mark that as

13 Exhibit No. 7, please.

14 (2/20/00 notice of violation marked as Exhibit

15 No. 7.)

16 Q Do you recognize the document that I'm putting before you

17 as Exhibit No. 7?

18 A Yes.

19 Q And is that also on December 20 of 2000 as 11 Newport

20 Street?

21 A Yes.

22 Q Also Apartment No. 3?

23 A Yes.

24 Q And is that also an inspection that you conducted

25 personally?

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1 A Yes.

2 Q What was the length of time prescribed for the landlord

3 to correct the violations in Exhibit No. 7?

4 A Two days.

5 Q Is the difference between two days and 24 hours in

6 Exhibit No. 6 and 7 the reason why there is separate

7 forms even though it's the same apartment?

8 A Yes.

9 Q All right. Is it fair to say that both Exhibit No. 7 and

10 Exhibit No. 4 which we marked earlier in both cases there

11 is no H number or case number designated?

12 A Yes.

13 Q And Exhibit No. 4 also does not make any reference to a

14 24-hour violation, is that correct?

15 A Yes.

16 Q Does it appear to you that Exhibit No. 4 is the

17 reinspection result which was generated as a result of

18 the outstanding violation listed in Exhibit No. 7?

19 A Yes.

20 Q Okay. Is it your understanding looking at these exhibits

21 that on December 26, 2000 there were three violations

22 outstanding?

23 A Yes.

24 MR. CHERNETSKY: That's all I have, George.

25 MR. OHLSON: Okay.

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1 MR. CHERNETSKY: Anything else?

2 MR. OHLSON: Just a couple of things.

3

4 REDIRECT-EXAMINATION

5 BY MR. OHLSON:

6 Q Do you remember what prompted you to go out on the

7 property on December 20 with -- oh, strike that.

8 MR. OHLSON: Let me just look at them right side up.

9 MR. CHERNETSKY: Sure.

10 Q Looking at Exhibit No. 6 and 7, the ones that you signed

11 on the bottom, do you remember what prompted you to go

12 out on these inspections on these days -- on this day?

13 A On December 20?

14 Q Yes, 2000.

15 A Miss Williams filed a complaint with our office.

16 Q Okay. You were trying to explain to us that there may

17 have been an error and that's why that may have been

18 mistaken; that there may have been an error in these.

19 Could you clear that up for me, please?

20 A What I said, I did not write the H numbers on these

21 documents.

22 Q Okay.

23 MR. CHERNETSKY: And just to clarify what these, you

24 are pointing to?

25 MR. OHLSON: We are talking about Exhibits 2, 3 and

4.

Q And what's the significance of not writing the H numbers on the document?

A I may have certified these at my desk and walked up, given them to a clerk and they wrote the H numbers on them.

Q Okay. Did you notice any of these violations when you did the prerenal inspection in February of 2000?

A Did I notice that the ceiling was leaking, no. At that time the ceiling wasn't leaking. Did I notice the bathroom sink had a leak, at that time there was no leak.

Q What about infestation with gnats?

A There was no one living in the property at the time.

Q But this is the same apartment that in February you issued -- well, you generated the paperwork that led to the prerenal inspection certification, is that correct?

A Yes.

MR. OHLSON: That's all I have.

RE CROSS-EXAMINATION

BY MR. CHERNETSKY:

Q Just one or two more. A prerenal certification certifies that the property meets the sanitary code on the day it's inspected, correct?

A Correct.

Q It makes no representation as to what the condition of

the property will be in the future?

A Correct.

MR. CHERNETSKY: That's it.

FURTHER REDIRECT-EXAMINATION

BY MR. OHLSON:

Q Just one more question. I shouldn't start with that.

The prerenal inspection you're looking to see if a property meets the state sanitary code, is that right?

A Yes.

Q And also is there a separate code for the City of Boston?

A I don't understand your question.

Q Okay. Is there a separate set of standards that apartments would have to meet aside from the state sanitary code the Boston City -- the City of Boston has? Is there a different code for the City of Boston?

A On the day that I did that prerenal inspection?

Q In 2000.

A No.

Q Did you change subsequently?

A There's a city ordinance passed now, yes.

Q And when did that pass?

A I don't know. Recently.

Q Was there a City of Boston code at the time in December of 2000 regarding prerenal inspections? Was there any?

A When I do a prerenal inspection, I'm looking to see if

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the unit meets the state sanitary code.

Q Okay.

A I enforce just the state sanitary code.

Q Is there any regulations in place about how to do a prerenal inspection?

A Then or now?

Q Then.

A No. Now we have a different set of rules.

Q Okay.

MR. OHLSON: I have no more questions.

MR. OHLSON: Do you want to talk to me? Just one minute.

(Short break taken.)

BY MR. OHLSON:

Q I wanted to clarify what I was asking you before. Is there a City of Boston code requiring prerenal inspections that you know of?

A Yes.

Q Okay. And is the intent of that code to encourage prerenal inspections, encourage landlords to get prerenal inspections?

MR. CHERNETSKY: Objection.

A I don't what the intent of the code is.

Q Does a landlord have to pay a fee with a prerenal inspection?

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A Yes.

Q Did you ever feel threatened by Mr. Smith?

A No.

Q Did you ever feel unsafe around Mr. Smith?

A Yes.

Q What do you mean by that?

A I mean that I did an inspection one day and he walked very closely behind me spurring out all kinds of statements behind me because he was unsatisfied with what I was saying. That made me uncomfortable.

MR. OHLSON: I have nothing further.

FURTHER RE CROSS-EXAMINATION

BY MR. CHERNETSKY:

Q You're a housing inspector you said, correct?

A Yes.

Q You were responsible for enforcing the sanitary code as part of your duties as housing inspector?

A Yes.

Q Are there other units with an ISD who deal with other types of codes?

A Yes.

Q But your job is focused on the sanitary code, correct?

A Yes.

Q Did Mr. Smith ever mention or remind you of his position as an employee of the City of Boston?

1 A Yes.

2 Q What did he say?

3 A Do you know who I am?

4 Q Did you feel that Mr. Smith wanted you to be more lenient

5 enforcing the code because of his status as a city

6 employee?

7 A That or feel threatened by him.

8 Q Did Mr. Smith ever threaten your job?

9 A I don't remember Mr. Smith's act words, but he spurred

10 out so many things, negative things to me that it just

11 made me uncomfortable.

12 Q Do you recall Mr. Smith ever threatening to contact the

13 press about your conduct of your duties?

14 A Yes.

15 MR. CHERNETSKY: That's all I have.

16 MR. OHLSON: No further questions.

17 (Deposition concluded at 11:30 a.m.)

1 Excerpt from Rule 30(e):

2 Submission to Witness; Changes; Signing.

3 When the testimony is fully transcribed, the

4 deposition shall be submitted to the witness for

5 examination and shall be read to or by him/her, unless

6 such examination and reading are waived by the witness

7 and by the parties. Any changes in form or substance

8 which the witness desires to make shall be entered upon

9 the deposition by the officer with a statement of the

10 reasons given by the witness for making them.

11 \*\*\*\*\*

12 I, EVANGELINA MAXWELL-DAVIS, have examined the above

13 transcript of my testimony, and it is true and correct to

14 the best of my knowledge, information and belief. Any

15 corrections are noted on the errata sheet.

16 Signed under the pains and penalties of perjury this

17 date of \_\_\_\_\_, 2004.

18 \_\_\_\_\_

19 Deponent's Signature

20 Subscribed and sworn to before me this \_\_\_\_\_ day of

21 \_\_\_\_\_, 2004.

22 \_\_\_\_\_

23 Notary Public

24 My Commission Expires:

25 \_\_\_\_\_

1 COMMONWEALTH OF MASSACHUSETTS

2 SUFFOLK, SS.

3 I, Nancy Atherton, a Shorthand Reporter and

4 Notary Public duly commissioned and qualified in and for

5 the Commonwealth of Massachusetts, do hereby certify that

6 there came before me on the 19th day of February, 2004

7 the person hereinbefore named, who was by me duly sworn

8 to testify to the truth of her knowledge concerning the

9 matters in controversy in this cause; that she was

10 thereupon carefully examined upon her oath and her

11 examination reduced to typewriting under my direction;

12 and that the deposition is a true and accurate record of

13 the testimony given by the witness.


14 I further certify that I am not interested in

15 the cause of this action.

16 IN WITNESS WHEREOF, I have hereunto set my

17 hand and affixed my notarial seal this 4th day of March,

18 2004.

19 

20 \_\_\_\_\_

21 NANCY ATHERTON

22 My Commission Expires:

23 May 28, 2010